IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

     Plaintiff,

v.   No. CV 07-0325 JP/ACT
                                        CR-04-0512 JP

CHRISTOPHER O. TURNER,

     Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant's response to the order entered April 13, 2007. In the order, the Court notified Defendant that rule 60(b)(4) of the Federal Rules of Civil Procedure does not provide a basis for an attack on a criminal judgment. In his response, Defendant asks the Court to recharacterize and construe his rule 60 motion as a 28 U.S.C. § 2255 motion. The Court now considers the motion under § 2255. *See* 28 U.S.C. § 2255 R.4(b).

No relief is available on Defendant's allegations. Defendant was charged and convicted of bank fraud under 18 U.S.C. § 1344. In his § 2255 motion, Defendant asserts that Congress never enacted the bank fraud statute and thus the Court had no jurisdiction to try or convict him thereunder. As noted in the earlier order, contrary to Defendant's assertions, on October 12, 1984, Congress enacted the statute under which Defendant was charged. *See* Pub. L. No. 98-473, 98 Stat. 2147 (codified as amended at 18 U.S.C. § 1344 (2000)); *United States v. De La Mata*, 266 F.3d 1275, 1287 (11th Cir. 2001). Because the statute was regularly enacted, the Court had jurisdiction of the subject matter in this criminal proceeding. *See, e.g., Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89-90 (1998); *United States v. Tush*, 287 F.3d 1294, 1297 (10th Cir. 2002); *United*

States v. Martin, 147 F.3d 529, 532 (7th Cir. 1998). Defendant's motion will be dismissed. *See* §

2255 R.4(b).

IT IS THEREFORE ORDERED that Defendant's Motion To Void Judgment Under Title

28 U.S.C. Federal Rules of Civil Procedure 60(b)(4) Et Seq (CV Doc. 1; CR Doc. 20) filed March

28, 2007, recharacterized and construed as a motion to vacate, set aside, or correct sentence under

28 U.S.C. § 2255, is DISMISSED with prejudice; and judgment will be entered.

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SENIOR UNITED STATES DISTRICT JUDGE